IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 329 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAIN VINODKUMAR HARDAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 329 of 2002

MR RJ GOSWAMI for Petitioner No. 1-2

MR DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/09/2002

ORAL JUDGEMENT

1. Rule. Learned Additional Public Prosecutor, Mr. Desai, waives service of notice of Rule on behalf of the respondent-State. In the facts and circumstances of the case and by consent of parties, the matter is taken up

today for final hearing.

2. Heard learned Advocate, Mr. Goswami, for the revisioners and learned Additional Public Prosecutor, Mr. Desai, for the respondent-State.

3. This revision application arises out of an order passed by learned Special Judge, Mehsana, on May 4, 2002, below application Ex.11 in Special Case No.4 of 2002, pending before him. The said application was preferred for discharge of the revisioners-accused therein on the ground of total absence of admissible evidence against them. The said application came to be rejected by the impugned order and, hence, this revision application.

4. The revisioners are charged with offences punishable under Sections 3 and 7 of the Essential Commodities Act, by virtue of an F.I.R. lodged by P.S.I.-A.K. Ghasura vide C.R.-II No.111 of 1999 dated 2.4.1999 before Mehsana City Police Station. As per the said F.I.R., three persons, namely, (1) Hasmukhbhai Jivrambhai Patel, (2) Dineshkumar Chelabhai Patel and (3) Baldevbhai Jethabhai Patel, were found to have been involved in illegal trading of solvent oil. On basis of the F.I.R., offence was registered and investigated. At the end of the investigation, charge sheet came to be filed against three persons named in the F.I.R. as well as the revisioners. After examining the investigation papers, the revisioners tendered Application Ex.11, praying for discharge, contending that there is no evidence against them, there is recovery or discovery by them and, therefore, they may be discharged. The order impugned herein came to be passed on May 4, 2002, observing that Section 227 of the Code of Criminal Procedure will not be applicable to the case. Earlier also, similar order was passed and was challenged before this Court by preferring Criminal Revision Application No.42 of 2002. This Court, by order dated February 1, 2002, allowed that revision application and order refusing discharge impugned therein came to be set aside. The matter was remanded to the Trial Court for decision on the application of the petitioners in accordance with law and in light of the observations made therein. After hearing the parties, the present order is passed by the learned Special Judge.

4.1 The learned Special Judge has discussed the material collected by the investigating agency, as indicated by the learned Additional Public Prosecutor. The learned Additional Public Prosecutor was called upon by the learned Special Judge to indicate, if there is any

evidence against accused No.5 and these revisioners herein to connect them with the offence. It transpires that, during the course of inquiry, it has emerged that accused Nos.2, 3 and 4 claimed to have purchased the solvent from accused Nos.5 and 6, ie. present revisioners. Excepting this, there is no other piece of evidence.

5. Learned Advocate for the revisioners has made available the papers served on the accused with the charge sheet. This Court has gone through those papers. Learned Additional Public Prosecutor, Mr. Desai, has also gone through those papers and it is found that there is no piece of admissible evidence to connect the revisioners with the offence and, therefore, there is no point in continuing the prosecution against the revisioners. No fruitful purpose is going to be served by insisting upon the revisioners to face the trial. The proceedings against the revisioners deserve to be dropped in light of the above factual scenario and the revision deserves to be allowed.

6. The revision application is allowed. The order impugned herein, ie. the order passed by the learned special Judge, Mehsana, below application Ex.11 in Special Case No.4 of 2002, on May 4, 2002 is hereby set aside and the proceedings against the revisioners in form of Special Case No.4 of 2000 based on C.R.-II 111 of 1999 are hereby dropped. The bail bond of the revisioners stand cancelled. Rule is made absolute. It is clarified that the trial may proceed in respect of other accused persons.

[A.L. DAVE, J.

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